

### REMARKS/ARGUMENTS

The Examiner rejected claims 1-42 as obvious (35 U.S.C. §103) over Bare (2003/0016624) and Hatakeyama (U.S. Patent No. 6,542,468). Applicants traverse for the following reasons.

Claims 1, 15, and 29 concern selecting one of multiple data paths to a device and require: selecting one of multiple paths indicated as enabled to transmit data, wherein a path is indicated as enabled or disabled; gathering transfer time data for each enabled path capable of being selected; and indicating paths as disabled having transfer time data satisfying a threshold, wherein paths indicated as disabled are not capable of being selected to use to transmit data.

In the Final Office Action, the Examiner cited col. 4, lines 53-60 of Hatakeyama as teaching the claim requirements of gathering transfer time data for each enabled path capable of being selected; and indicating paths as disabled having transfer time data satisfying a threshold, wherein paths indicated as disabled are not capable of being selected to use to transmit data. (Final Office Action, pgs. 2-3) Applicants traverse.

The cited col. 4 discusses selecting an optimum path by recording transmission data and response times per unit data length returned from a transmission, and estimating the response time for each path by using the recorded information. Hatakeyama further mentions selecting a path by using an actual response time per unit data length. (Col. 4, lines 61-65)

During the phone interview, the Examiner suggested that perhaps Hatakeyama's mention of selecting an optimal path discloses the claim requirement of indicating paths as disabled that have transfer time data satisfying a threshold. Applicants traverse. Although Hatakeyama discusses selecting an optimum path by using an actual response time per unit data length, nowhere does the cited Hatakeyama anywhere teach or suggest the claim requirements of indicating paths as disabled that have transfer time data satisfying a threshold, wherein paths indicated as disabled are not capable of being selected to use to transmit data.

In fact, Hatakeyama discusses a different use of response time data, to select an optimum path to use, whereas the claims require that the transfer time data be used to indicate a path as disabled if the transfer time data for the path satisfies a threshold. The claims require that a path indicated as disabled is not capable of being selected to use to transmit data. Applicants submit

that the mention of selecting an optimum path in Hatekayama does not teach or suggest the claim requirement of indicating a path as disabled and not capable of being selected. Applicants submit that selecting an optimum path is different from and does not suggest indicating a path as disable and not capable of being selected.

Moreover, Applicants submit that Hatekayama teaches away from the claim requirement of using transfer time data to determine a path to indicate as disabled, because Hatekayama uses response time data for an opposite purpose, to select an optimum path to use, not to disable as claimed. Thus, nowhere does the cited Hatekayama teach or suggest that the cited optimum path, determined from the response data is indicated as disabled and not capable of being selected to use to transmit data as claimed.

During the phone interview, the Examiner referenced col. 10, lines 50-64 of Hatekayama. The referenced col. 10 discusses specific operations of a path calculating unit 131A. According to Hatekayama, the path calculating unit 131A determines an optimum path from the client to a destination by using the estimated information from the estimation information managing unit and an actual response time. (Col. 8, lines 50-65) The referenced col. 10 mentions that the path calculating 131A unit requests an optimum estimation individual and an actual response time of the estimation information manager unit. The path calculating unit can adjust the timing at which it requests the estimation individual of the estimation information managing unit according to a degree of fitness of the estimation individual. According to Hatekayama, a "degree of fitness" is a degree for determining how accurately the response time of a service request can be estimated. (col. 11, lines 15-20)

The referenced col. 10 thus discusses specific operations of the path calculating unit 131A that selects the optimum path. Again, nowhere in this referenced col. 10 is there any teaching or mention that the determined optimum path is indicated as disabled and not capable of being selected to use to transmit data as claimed.

Accordingly, claims 1, 15, and 29 are patentable over the cited art because the cited and referenced combination does not disclose all the claim requirements.

Dependent claims 2-14, 16-28, and 30-42 are patentable over the cited art because they depend from one of claims 1, 15, and 29, which are patentable over the cited art for the reasons

discussed above. Moreover, certain of the below discussed dependent claims provide additional grounds of patentability over the cited art.

Claims 2, 16, and 30 depend from claims 1, 15, and 29 and further require indicating one disabled path as enabled after performing a threshold number of transfer operations. The Examiner cited col. 5, lines 37-42 of Hatakeyama as teaching the additional requirements of these claims. (Final Office Action, pg. 3). Applicants traverse for the following reasons.

The cited col. 5 mentions a method for selecting a path of data transmitted from a source to a destination node, and a network path of data returned from the transmission destination node in an environment where nodes are distributed and located via a network.

Nowhere does this cited col. 5 anywhere teach or suggest the claim requirement of indicating one disabled path as enabled after performing a threshold number of transfer operations. Instead, the cited col. 5 mentions selecting an optimal path in general, not indicating the status of a disabled path to enabled after performing a threshold number of transfer operations as claimed.

Applicants again submit that the cited Hatakeyama's discussion of selecting the optimum path to use based on response data does not disclose the specific claim requirement of indicating a disabled path as enabled after performing a threshold number of operations.

Accordingly, claims 2, 16, and 30 provide additional grounds of patentability over the cited art.

Claims 3, 17, and 31 depend from claims 2, 16, and 30 and further require disabling the path for a first threshold number of transfer operations if the path has a transfer data time satisfying a first threshold and disabling the path for a second threshold number of transfer operations if the path has a transfer data time satisfying a second threshold. The Examiner cited col. 11, lines 32-47 of Hatakeyama as teaching the additional requirements of these claims. (Final Office Action, pg. 3) Applicants traverse for the following reasons.

The cited col. 11 mentions an "RIR" which is a most recent influence rate index indicating how much difference exists between the time at which an actual response time is measured and the time at which the degree of fitness is calculated. A positive constant is a value obtained by subtracting the actual response time measured from the time at which RIR is used.

A “DRT<sub>i</sub>” is an absolute value of the difference between the estimated response time of the time point at which the *i*th actual response time is measured.

The cited col. 11 discusses the parameters for a degree of fitness, calculation which is a degree for determining how accurately the response time of a service request can be estimated. (Col. 11, lines 15-25). Nowhere does this cited section concerning the “degree of fitness” anywhere teach or suggest the claim requirement of disabling the path for a first threshold number of transfer operations if the path has a transfer data time satisfying a first threshold and disabling the path for a second threshold number of transfer operations if the path has a transfer data time satisfying a second threshold.

Nowhere in the cited col. 11 is there any teaching, suggestion or mention of disabling paths for first and second threshold number of transfer operations as claimed. Instead, the cited col. 11 concerns calculating a “degree of fitness”, which is a degree for determining how accurately the response time of a service request can be estimated.

Accordingly, claims 3, 17, and 31 provide additional grounds of patentability over the cited art.

Claims 4, 18, and 32 depend from claims 1, 15, and 29 and further require that transfer time data is gathered by path and transfer size, wherein a path is disabled for a given transfer size and wherein one path disabled for one transfer size is capable of being enabled for at least one other transfer size. The Examiner cited pg. 28, paragraphs 365-367 of Bare as teaching the additional requirements of these claims. (Final Office Action, pg. 4)

The cited pg. 28, paragraph 365 mentions that when a link comes up for the first time, the port will become the broadcast link if no other ports received the cost packet. This moves paths to ports with the lowest current latency. Nowhere does paragraph 365 anywhere teach, suggest or mention gathering transfer time data by path and transfer size and that a path is disabled for a given transfer size. Instead, the cited paragraph 365 mentions how a port becomes the broadcast link.

The cited paragraph 366 mentions that in one case, when the switch receives the cost criteria, it will delete the current broadcast path and return an ACK, and the ACK of the cost packet must wait until the delete has been confirmed. The cited paragraph 367 mentions that in

the second case it is possible the cost packet went through an adjacent switch dependent on this switch broadcast path, and for this reason the switch cannot merely move the broadcast port.

Nowhere in the cited paragraphs 366 and 367 is there any teaching, suggestion or mention of gathering transfer time data by path and transfer size and that a path is disabled for a given transfer size. Instead, these paragraphs 365-367 discuss something entirely different and nowhere mention the specific requirements concerning gathering transfer time data.

Accordingly, claims 4, 18, and 32 provide additional grounds of patentability over the cited art.

Claims 5, 19, and 33 depend from claims 1, 15, and 29 and further require that gathering transfer time data further comprises: for each enabled path, gathering a cumulative transfer time for all transfer operations during a measurement period through the path and a cumulative number of the transfer operations during the measurement period; and for each enabled path determining the average cumulative transfer time for the measurement period by dividing the cumulative time by the cumulative number of transfers, wherein the path is indicated as disabled if the average cumulative transfer time for the path satisfies the threshold.

The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the claim requirement that for each enabled path, gathering a cumulative transfer time for all transfer operations during a measurement period through the path and a cumulative number of the transfer operations during the measurement period. (Final Office Action, pg. 4) Applicants traverse.

The cited col. 22 discusses a response time for paths that can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses using stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention gathering a cumulative number of the transfer operations during a measurement period. There is no mention of gathering the number of transfers for each enableAugust 24, 2005d path as claimed.

The Examiner cited col. 22, lines 57-64 as teaching the claim requirements that for each enabled path, determining the average cumulative transfer time for the measurement period by dividing the cumulative time by the cumulative number of transfers, wherein the path is indicated

as disabled if the average cumulative transfer time for the path satisfies the threshold. (Final Office Action, pg. 4) Applicants traverse.

The cited col. 22 mentions that with the path selecting method using actual response time per unit data length, the overall response performance from the path is evaluated so an optimum path may be selected. Although the cited col. 22 discusses using information concerning an actual response time per unit data length to select an optimum path, this measured information is different from and does not teach or suggest the claimed information of the average cumulative transfer time for the measurement period by dividing the cumulative time by the cumulative number of transfers. Moreover, nowhere does the cited col. 22 anywhere teach or suggest indicating a path as disabled if the average cumulative transfer time for the path satisfies the threshold.

Accordingly, claims 5, 19, and 33 provide additional grounds of patentability over the cited art.

Claims 6, 20, and 34 depend from claims 5, 19, and 33.

The Examiner cited col. 23, lines 14-19 of Hatakeyama as teaching the claim requirements that the measurement period comprises a number of transfer operations for all paths, wherein the determination to disable paths occurs after the number of transfer operations in the measurement period has occurred. (Final Office Action, pg. 4) Applicants traverse.

The cited col. 23 mentions that as the number of nodes and path patterns to be selected grow, the amount of calculation for estimating an optimum path increases, but the algorithm allows estimation with a relatively small amount of calculation despite increased complexity. This discussion of the general scalability of the discussed algorithm nowhere suggests or mentions the claim requirement that a measurement period comprises a number of transfer operations for all paths. Instead, the cited col. 23 just mentions that the algorithm operates as complexity of the network increases. Applicants submit that this cited col. 3 does not teach, suggest, or concern the claim requirements that the measurement period comprises a number of transfer operations. Further, nowhere does the cited col. 3 anywhere teach or suggest the claim requirement that the determination to disable paths occurs after the number of transfer operations in the measurement period has occurred.

The Examiner cited col. 23, lines 20-26 of Hatakeyama as teaching the claim requirement of starting another measurement period to gather transfer time data after determining paths to disable. (Final Office Action, pg. 4)

The cited col. 23 mentions that with the algorithm it is sufficient to calculate a difference of an estimation individual, which occurs due to a network environment change, and that it does not require performing a calculation based on the entire environmental data each time a path is selected.

Nowhere does the cited col. 23 anywhere teach, suggest or mention the claim requirement of starting another measurement period to gather transfer time data after determining paths to disable. Instead, the cited col. 35 mentions that the calculation does not have to occur each time a path is selected.

Accordingly, claims 6, 20, and 34 provide additional grounds of patentability over the cited art.

Claims 7, 21, and 35 depends from claims 1, 15, and 29 and further require that the transfer time data is gathered by path and transfer size, and wherein the average cumulative transfer time is calculated for each enabled path and for at least one transfer size. The Examiner cited col. 22, lines 40-56 as teaching the additional requirements of these claims. (Final Office Action, pg. 5) Applicants traverse for the following reasons.

As discussed, the cited col. 22 discusses a response time for paths that can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention that transfer time data is gathered by path and transfer size, and that the average cumulative transfer time is calculated for each enabled path and for at least one transfer size. Instead, the cited col. 22 discusses measuring a response time per unit data length per path, but nowhere suggests or mentions gathering transfer time data by path and transfer size as claimed.

Accordingly, claims 7, 21, and 35 provide additional grounds of patentability over the cited art.

Claims 8, 22, and 36 depend from claims 7, 21, and 35 and further require that the measurement period comprises a number of transfer operations for all paths for a transfer size, wherein the determination to disable paths for a transfer size occurs after the number of transfer operations in the measurement period has occurred, and further comprising starting another measurement period to gather transfer time data for the transfer size after determining paths to disable for the transfer size.

The Examiner cited col. 14, lines 54-64 of Hatakeyama as teaching the claim requirement that the measurement period comprises a number of transfer operations for all paths for a transfer size, wherein the determination to disable paths for a transfer size occurs after the number of transfer operations in the measurement period has occurred. (Final Office Action, pg. 5) Applicants traverse.

The cited col. 14 mentions that the estimated response time for each of the paths is obtained based on the estimation individual and actual response times. A path calculating unit knows at least one of the possible available paths and collect the information of one available path.

Nowhere does this cited col. 14 anywhere teach or mention the claim requirement that the measurement period comprises a number of transfer operations for all paths for a transfer size, wherein the determination to disable paths for a transfer size occurs after the number of transfer operations in the measurement period has occurred. There is no mention in the cited col. 14 that the measurement period comprises a number of transfer operations or determining to disable paths for a transfer size.

Accordingly, claims 8, 22, and 36 provide additional grounds of patentability over the cited art.

Claims 9, 23, and 37 depend from claims 5, 19, and 33 and further require that the transfer time is measured from the time the transfer is sent to the device to the time a response is received from the device indicating that the transfer completed, further comprising adding the transfer time for a transfer transmitted down the path to the cumulative transfer time for the path. The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the additional requirements of these claims. (Fifth Office Action, pg. 5) Applicants traverse for the following reasons.



As discussed, the cited col. 22 discusses that a response time for paths can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention maintaining a cumulative transfer time for a path. Instead, the cited col. 22 discusses a response time per unit data length, but does not mention or suggest a cumulative transfer time for a path.

Accordingly, claims 9, 22, and 37 provide additional grounds of patentability over the cited art.

Claims 10, 24, and 38 depend from claims 5, 19, and 33.

The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the claim requirement that for each enabled path, a best average transfer time is determined from the average cumulative transfer times for all paths. (Final Office Action, pg. 5) Applicants traverse.

As discussed, the cited col. 22 discusses that a response time for paths can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach or mention determining a best average transfer time from the average cumulative transfer times for all paths.

The Examiner cited col. 11, lines 48-59 as teaching the claim requirement that determining whether the average cumulative transfer time for one path satisfies the threshold comprises determining whether the average cumulative transfer time for the path exceeds the best average transfer time by a percentage amount. (Final Office Action, pg. 6) Applicants traverse.

The cited col. 11 mentions that if an actual response time matches an estimated response time, the degree of fitness becomes "1". The degree of fitness is defined as a degree for determining how accurately the response time of a service can be estimated. (Col. 11, lines 16-20). A degree of fitness closer to one means that the estimation individual has higher genes. Applicants submit that this cited degree of fitness does not concern nor suggest the claim requirement of determining the claim requirement whether the average cumulative transfer time for the path exceeds the best average transfer time by a percentage amount.

Accordingly, claims 10, 24, and 38 provide additional grounds of patentability over the cited art.

Claims 11, 25, and 39 depend from claims 10, 24, and 38 and further require that determining whether the average cumulative transfer time satisfies the threshold further comprises disabling the path for a first number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time by a first percentage amount and disabling the path for a second number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time by a second percentage amount. The Examiner cited col. 22, lines 40-56 of Hatakeyama as teaching the additional requirements of these claims. (Final Office Action, pg. 6) Applicants traverse for the following reasons.

As discussed, the cited col. 22 discusses that a response time for paths can be estimated even if response data cannot be collected by using previously stored actual response time per unit data length. Although the cited col. 22 discusses stored response times per unit data length, nowhere does the cited col. 22 anywhere teach, suggest or mention the claim requirements of disabling the path for a first number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time by a first percentage amount and disabling the path for a second number of transfer operations if the average cumulative transfer time for the path exceeds the best average transfer time by a second percentage amount. In the cited col. 22 there is no mention of disabling paths, nor considering best average transfer times in deciding when to disable paths.

Accordingly, claims 11, 25, and 39 provide additional grounds of patentability over the cited art.

Claims 13, 27, and 41 depend from claims 11, 25, and 39 and further require that transfer time data is gathered by path and a size of the update, wherein a path is disabled for a given update size and wherein the path is capable of being enabled for at least one other update size. The Examiner cited pg. 20, para. 266 of Bare as teaching the additional requirements of these claims. (Final Office Action, pg. 6) Applicants traverse for the following reasons.

The cited pg. 20 mentions that when a switch port receives a cost packet it updates its tables and sends out an acknowledgment. To update its tables, the switch will first add the

outbound queue cost for the port it received the packet on to the switch referenced in the packet. The cost information is then used to update the switch cost table.

Although the cited pg. 20 mentions updating a table with a queue cost, nowhere does the cited pg. 20 anywhere teach, suggest or mention that transfer time data is gathered by path and a size of the update, wherein a path is disabled for a given update size and wherein the path is capable of being enabled for at least one other update size. These specific claim requirements are nowhere mentioned or suggested in the cited pg. 20.

Applicants presented the above arguments distinguishing the above cited paragraphs 365-367 from the requirements of claims 4, 18, and 32 in the First Office Action. If the Examiner maintains the rejection of these claims, Applicants request the examiner to specifically address my grounds of distinction over this cited art.

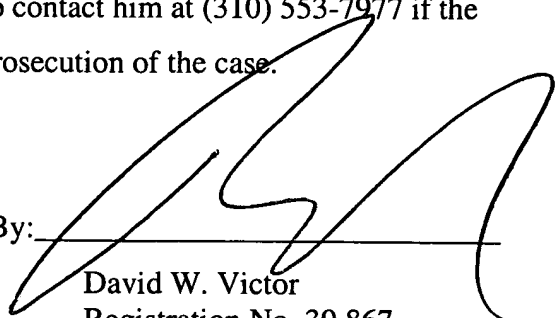
Accordingly, claims 13, 27, and 41 provide additional grounds of patentability over the cited art.

#### Conclusion

For all the above reasons, Applicant submits that the pending claims 1-42 are patentable over the art of record. Applicants have not added any claims. Nonetheless, should any additional fees be required, please charge Deposit Account No. 09-0466.

The attorney of record invites the Examiner to contact him at (310) 553-7977 if the Examiner believes such contact would advance the prosecution of the case.

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By:   
David W. Victor  
Registration No. 39,867

Please direct all correspondences to:

David Victor  
Konrad Raynes Victor & Mann, LLP  
315 South Beverly Drive, Ste. 210  
Beverly Hills, CA 90212  
Tel: 310-553-7977  
Fax: 310-556-7984